

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claim 49 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 49 is directed to a Per Se Data Transformation; a template parameter or a mathematical model (generating a mathematical model generally called template, establishing a default for the model, and comparing the model with the default model). Identifying that a claim transforms data from one value to another is not by itself sufficient for establishing that the claim is eligible for patent protection. See, e.g., *Benson*, 409 U.S. 63, 175, USPQ, 673 (finding machine-implemented method of converting binary-coded decimal numbers into pure binary numbers unpatentable). In *Benson*, the claimed invention was held to be merely a series of mathematical calculations having “no substantial practical application.” *Id.* at 71, 175 USPQ at 676. The claimed invention calculates an effectiveness factor determined by comparing a modified template or mathematical model to a default template, but does not recite a practical application of an abstract idea that produces a useful, concrete, and tangible result.

Also a method to be statutory it must be either transform matter or be tied to subject matter of another statutory category.

The claimed invention method does not transform an article or physical object to a different state or thing.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claim 49 is rejected under 35 U.S.C. 102(e) as being unpatentable over Shibuya et al. (U.S. Patent Application Publication No. 2004/0064269).

In view of 35 U.S.C. 101 rejection above, the claim is rejected under 35 U.S.C. 102 as best understood.

With respect to claim 49, Shibuya et al., teaches a computer implemented method for updating return on investment templates comprising;

adjusting a modified template parameter value using an effectiveness factor (see page 5 paragraph [0068], in addition to the automatically created

geometric template patterns 705, a user registers a template pattern 707 in advance and a pattern image 706 having the highest matching score selected; and see page 6 paragraph [0080], calculating the matching score between the high density area image 704 and the template pattern image 705, FIG. 15) and recording the modified, template parameter value in a data list (see page 8 paragraph [0098], the addition is performed at least once and the result is stored as a pattern information);

plotting (see page 3 paragraph [0052], when a straight line passing through point P1 on the xy space is plotted) the data list on a histogram (see page 5 paragraph [0072], a histogram of the area of the Voronoi cell is calculated);

determining if the histogram contains more than one peak (see page 3 paragraph [0048], the maximum voting value (x, y) is detected as a center candidate. Peak sharpness is checked);

responsive to a determination that the histogram contains one-peak, updating a default template parameter value (see page 7 paragraph [0094], the pattern position, size, and shape of the geometric template pattern 705 are roughly classified according to a certain rule and default information is added);

responsive to a determination that the histogram contains more than one peak (see page 3 paragraph [0048], the maximum voting value (x, y) is detected as a center candidate. Peak sharpness is checked),

determining if the default template parameter value is within one standard deviation of a histogram peak (see page 6 paragraph [0085], standard deviation of pixel values inside and outside of the pattern);

responsive to a determination that the default template parameter value is within one standard deviation of the histogram peak (see page 6 paragraph [0085], standard deviation of pixel values inside of the pattern), updating the default template parameter value using a data for the peak which is within one standard deviation of the default template parameter value (see page 7 paragraph [0094], the pattern position, size, and shape of the geometric template pattern 705 are roughly classified according to a certain rule and default information is added), and analyzing any histogram peak (see page 3 paragraph [0048], the maximum voting value (x, y) is detected as a center candidate. Peak sharpness is checked) that is not within one standard deviation of the default template parameter value (see page 6 paragraph [0085], standard deviation of pixel values outside of the pattern);

responsive to a determination that the default template parameter value is not within one standard deviation (see page 6 paragraph [0085], standard deviation of pixel values inside of the pattern) of any of the histogram peaks, analyzing a histogram peak (see page 3 paragraph [0048], the maximum voting value (x, y) is detected as a center candidate. Peak sharpness is checked), and determining if a standard deviation for the histogram peak is less than a template creation threshold (see page 6 paragraph [0086], the C is compared to a

predetermined threshold value and if the C is equal to or below the threshold value, it is judged that there is no pattern);

responsive to a determination that the standard deviation for the analyzed peak is less than the template creation threshold, creating a new template using an average determined by analyzing the histogram peak (see page 6 paragraph [0084], average value of pixel values inside and outside the pattern); and

wherein the default template parameter value is updated by averaging a modified template parameter value with the default template parameter value to obtain an updated template parameter value (see page 7 paragraph [0098], the pattern information addition means 301 consists of a section for adding default information to the geometric template pattern and a section for manually adding information to the user registration template pattern);

wherein the effectiveness factor is determined by comparing the modified, template to the default template, increasing the effectiveness, factor when a consultant does not have to modify a default template parameter value, and increasing the effectiveness factor when the default template accurately represents a company's processes (see page 6, paragraphs [0081]-[0086], a ratio C of the judgment/analysis value inside and outside the pattern).

Conclusion

Prior Art

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ciccone, Jr. et al. [U.S. Patent No. 6,338,149] describes a managing a plurality of templates.

Nonaka et al. [U.S. Patent No. 6,920,364] describes an analysis for different template portions.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Felix Suarez, whose telephone number is (571) 272-2223. The examiner can normally be reached on weekdays from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eliseo Ramos-Feliciano can be reached on (571) 272-7925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for regular communications and for After Final communications.

June 4, 2008

/Felix E Suarez/

Examiner, Art Unit 2857

/Eliseo Ramos-Feliciano/
Supervisory Patent Examiner, Art Unit 2857